INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions:	**07-005-06-1-5-00001**
	07-005-06-1-5-00002
Petitioner:	**R. Gordon Miller**
Respondent:	**Brown County Assessor**
Parcels:	**07-07-19-100-330.000-005**
	07-07-19-100-329.000-005
Assessment Year:	**2006**

The Indiana Board of Tax Review (Board) issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. The Petitioner initiated assessment appeals with the Brown County Property Tax Assessment Board of Appeals (PTABOA) by timely filing Forms 130.

2. The PTABOA initially issued Form 115 Determinations that were inconsistent with information on the property record cards in that the improvement value was on the opposite parcel. Subsequently, corrected Form 115 Determinations were issued to be consistent with the property record cards. (It appears that the mailing date for one of the corrected Form 115s was updated to February 28, 2011, but the other corrected Form 115 still indicates it was mailed on December 29, 2010, which was the mailing date on the first Form 115s.) Both parties made matters even more confusing by frequent references to old, alternate parcel numbers. Thus, parcel number 07-07-19-100-330.000-005 is the same parcel as 001-28400-00. Similarly, parcel number 07-07-19-100-329.000-005 is the same parcel as 001-28400-03.

3. The Petitioner appealed both petitions to the Board by filing Petitions for Review of Assessment, Form 131, on February 7, 2011. The Petitioner elected to have these appeals heard according to small claims procedures.

4. Administrative Law Judge Paul Stultz held the Board's administrative hearing on September 5, 2012. He did not inspect the property.

5. Certified Tax Representative Milo E. Smith represented the Petitioner and he was affirmed as a witness. Dean Layman also was affirmed as a witness for the Petitioner, but he did not testify. Kay Schwade of the Nexus Group represented the Respondent and she was sworn as a witness. Frank Kelly of the Nexus Group also was sworn as a witness for the Respondent.

Facts

6. Both parcels are used as a parking lot at Van Buren and Gould Streets in Nashville. Although both parcels are paved, all of the improvement value is listed on one parcel. The parties agreed that the parcels function as one property and should be considered as a single economic unit.

7. The PTABOA's corrected determination for parcel number 07-07-19-100-330.000-005 (petition number 07-005-06-1-5-00001) has the assessed value at $178,000 for the land and $15,600 for the improvements (total of $193,600).

8. The PTABOA's corrected determination for parcel number 07-07-19-100-329.000-005 (petition number 07-005-06-1-5-00002) has the assessed value at $178,000 for the land and 0 for the improvements.

9. The combined assessed value is $371,600.

10. The Petitioner claimed the Respondent has the burden to prove the assessments are correct, and failing to do so, the assessed value for each appeal should be the prior year's assessment (i.e., the assessed value for parcel number 07-07-19-100-330.000-005 should be reduced to $178,600 and the assessed value for parcel number 07-07-19-100-329.000-005 should be reduced to $161,800).

Burden of Proof

11. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). Nevertheless, the Indiana General Assembly enacted Ind. Code § 6-1.1-15-17.2 and in some cases it shifts the burden of proof:

> This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

I.C. § 6-1.1-15-17.2.

12. The parties agree these 2006 assessments increased more than 5% from the 2005 assessor's assessments. Therefore, the Respondent has the burden of proving these 2006 assessments are correct.

Record

13. The official record for this matter contains the following:

    a. The Form 131 Petitions with corrected Forms 115,

    b. A digital recording of the hearing,

    c. Petitioner Exhibits – None,
    Respondent Exhibit A – Property record cards (PRCs) for both parcels with photographs of the subject property,
    Respondent Exhibit B – Assessment Change Summary,
    Respondent Exhibit C – Land Value Analysis,
    Respondent Exhibit D – Map showing subject property and comparables with PRC data for the comparables,
    Respondent Exhibit E – Listing offering the subject property for sale,
    Respondent Exhibit F – Income Capitalization Analysis with attachments,
    Respondent Exhibit G – Map showing subject property and comparables with PRC data for the comparables,
    Board Exhibit A – Form 131 Petitions,
    Board Exhibit B – Notice of Hearing,
    Board Exhibit C – Hearing Sign In Sheet,

    d. These Findings and Conclusions.

Contentions

14. Summary of the Respondent's case:

    a. Petitioner Exhibit A contains the PRCs for both parcels that constitute the subject property. They show the valuation records for both parcels for 2005, 2006, and 2007. The land data computations on the lower part of those cards is for 2007 and shows that $24.00 per square foot was used, but that figure is for 2007. *Kelly testimony; Resp't Ex. A.*

    b. The 2006 land assessments for the subject property were based on $22.00 per square foot. Three comparable sales from 2004 and 2005 show this is a reasonable value. Those sales were improved properties also located in Nashville. After the land value was extracted from those selling prices, the land ranged from approximately $18.50 to $25.00 per square foot. The highest price per square foot ($24.97) was for a property that is much smaller than the subject property—and smaller properties generally sell for more per square foot because values per

square foot decrease as parcels get larger. For a much larger parcel (almost half an acre) the selling price was $19.60 per square foot. The 2006 land assessments of these comparables and the other downtown Nashville land assessments were based on $22.00 per square foot. This land rate falls within the range indicated by the sales. *Kelly testimony; Resp't Ex. C, D*.

c. The Petitioner listed the subject property with a real estate agent from May 1, 2000 through October 2, 2006. The asking price was $399,000 (total for both parcels). The listing price indicates what the Petitioner thinks the property was worth, even though during that time it did not sell. *Kelly testimony; Resp't Ex. E*. Subsequently it did sell for $400,000 in 2011. *Kelly testimony*.

d. The income capitalization approach supports the existing assessed values. According to the listing contract, the potential gross income (i.e., income from parking) is $30,000 annually. *Resp't Ex. E*. Three national surveys were considered and "we" determined the capitalization rate of 7.35% was appropriate.[1] The value according to the income capitalization analysis is $408,160 and is greater than the combined assessed value of the parcels. *Kelly testimony; Resp't Ex. F*.

e. Two other parking lots about 3 blocks from the subject property also were assessed at $22.00 per square foot. Each of those parcels is exactly the same size as each of the subject parcels (8,092 square feet) and they all got the same assessed land value, which was $178,000. *Kelly testimony; Resp't Ex. G.*

15. Summary of the Petitioner's case:

a. The Respondent did not establish a prima facie case that either assessment is correct. Consequently, the assessments should revert back to their 2005 values. *Smith testimony.*

b. The Respondent's comparative sales analysis used only 3 sales and it used the assessed value of the improvements without verifying those values are accurate. *Smith testimony.*

c. The Respondent used potential gross income of $30,000 per year and a national capitalization rate of 7.35%. Net income and a local capitalization rate should have been used. *Smith testimony.*

[1] Mr. Kelly used the word "we" several times, but never made it clear exactly to whom he was referring. Considering the totality of Mr. Kelly's testimony, it appears to be a generic reference to Nexus Group.

Analysis

16. The Respondent failed to make a prima facie case that the disputed assessments are correct.

    a. Real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

    b. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Finance,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2006 assessment was January 1, 2005. IC 6-1.1-4-4.5(f). Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, that required valuation date. *Long*, 821 N.E.2d at 471.

    c. The purchase price of a property can be the best evidence of a property's value. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). The subject property (both parcels) sold for $400,000 in 2011. But nothing in the record relates that value to the relevant 2005 valuation date. Accordingly, this evidence is of no probative value. *Long*, 821 N.E.2d at 471.

    d. Several years before the 2011 sale, the Petitioner listed the subject property with a realtor and was asking $399,000. This listing lasted from 2000 through most of 2006. According to Mr. Kelly, this asking price shows what the Petitioner thought the property was worth even though there was no sale. An asking price, however, is a poor indication of market value because it does not represent a completed sale. MANUAL at 10 ("Implicit in this definition [of market value] is the consummation of a sale as of a specified date and the passing of title from seller to buyer…"). Under limited circumstances, an asking price can have minimal evidentiary value. When reasonable marketing efforts are made to sell a property at a given price for a long period of time and those efforts are

unsuccessful, it can be inferred that the market value-in-use is something less than the asking price. But proof that the market value-in-use of the subject property is something less than $399, 000 does not prove the assessed value of $371,400 is correct.

e. The Respondent presented an income capitalization analysis that concluded the value of the subject property is $408,160. But this evidence is not credible for a number of reasons. Although several references to "we" may be an indication that Nexus Group is responsible, the one-page analysis contains no indication of who actually prepared it. Furthermore, there is no indication it was prepared in conformity with generally accepted appraisal principles. The calculation is based on income of $30,000. This figure was taken from the real estate listing, which in one place shows potential gross income of $30,000 and in another place states, "Income from parking is approximately $30,000 annually." The income capitalization calculation apparently assumed this figure was net income and applied the capitalization rate to it. But the record does not support this assumption. Nothing in the record substantially supports the fundamental assumption that $30,000 is the appropriate income figure to capitalize. In addition to the income amount, the capitalization rate is problematic. Three sources were considered:

> The Korpaz [sic.] Survey for the 1st Quarter of 2006 provides a dividend indicator of 7.57%. The RealtyRates.com Investor Survey for the 3rd Quarter of 2012 shows an average cap rate of 7.18% for all types of properties. In the Babson Capital Research Note June 2009, a historical review of cap rates shows rates between 5% - 7% during the period of 2006. *** For the purposes of this demonstration, we selected a rate of 6.0% given that the investment risk is far less for land investments than it is for retail investments.

Resp't Ex. F. The net property tax rate for Nashville, 1.3465% also was loaded to get a capitalization rate of 7.35%. After reviewing all the evidence, the Respondent failed to prove that a national capitalization rate is relevant to this market area. The use of the 7.35% capitalization rate is a conclusion without adequate support in the record. For all these reasons, the Board ultimately gives no weight to this income capitalization analysis.

f. The Respondent claims that sales in the same area support the assessed land value at $22.00 per square foot. The Respondent presented evidence of three sales during 2004/2005 in the downtown Nashville area. *Resp't Ex. C, D.* All three were sales of improved properties, not just bare land. The Respondent used the abstraction (extraction) method to determine the value of land from the sales.[2]

[2] In the abstraction method the "value of the land is determined by subtracting the depreciated value of the improvements from the sales price. The result indicates the contribution of the land value to the total sale." GUIDELINES, chap. 2 at 14.

According to Mr. Kelly, these three sales indicate land values ranging from $18.49 to $24.97 per square foot. He acknowledged, however, that the highest per square foot value was for a much smaller parcel. He also acknowledged that per square foot prices for smaller parcels tend to be more than for larger parcels. The lot sizes, extracted land selling prices, and land selling prices per square foot for these three comparables are as follows.

square feet	extracted land price	price/square foot
3,328	$83,100	$24.97
21,780	$426,900	$19.60
10,620	$196,400	$18.49

The subject property consists of two contiguous parcels, each containing 8,092 square feet. Thus, the total area for the subject property is 16,184 square feet. If this part of the Respondent's case is to be believed, it seems to indicate the assessed land value for the subject property should be in the range of $18.49 to $19.60 and not $22.00 per square foot.[3]

g. Closer examination of this sales comparison approach reveals another fault. Land values were extracted from the total selling prices by merely subtracting the assessed value of improvements. The Respondent offered no evidence that those assessed values actually are the depreciated values of those improvements. To repeat, this is a case where the Respondent has the burden to prove the disputed assessments are correct. Ind. Code § 6-1.1-15-17.2. To the extent there might be any inconsistency between the burden shifting provisions in Ind. Code § 6-1.1-15-17.2 and the presumption that a value determined from the Guidelines is presumed to be accurate, the statute controls. *See* MANUAL at 5. Consequently, the Board will not presume the improvements' assessed values are correct. This point eviscerates the Respondent's attempt to prove the value of the subject property through comparable sales.

h. In addition, the sales comparison approach offered by the Respondent goes entirely to the land value and ignores the value of the improvements on the subject property, even though that assessed value is small.

i. Finally, the Respondent attempted to make a case by proving purportedly comparable assessments. This sort of proof is specifically authorized by statute: "To accurately determine market-value-in-use, a taxpayer or an assessing official may … introduce evidence of the assessments of any relevant, comparable property. **** The determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices." Ind. Code § 6-1.1-15-18(c).

[3] The Respondent established only the size of each parcel and the relative locations scattered around downtown Nashville. The Board makes no determination here about whether the Respondent satisfied the minimum requirements for a valid land comparison.

j. The Respondent presented property record cards of two other parcels to demonstrate that land was assessed at $22.00 per square foot for 2006, the same as the subject parcels. All these properties are located in the same taxing district in Nashville. The subject property is located on Van Buren Street and the comparables are located a few blocks away on Old School Way. The relative locations are shown on the map identified as Respondent Exhibit G. All of the parcels have 8092 square feet of land. All of the parcels are paved and used for parking. None of these points of comparison was challenged by the Petitioner. Thus, the Respondent established that the land of the subject property and these two other parcels is comparable. *See Long*, 821 N.E.2d at 471. It appears that $22.00 per square foot was used for the land assessment of the subject property and these comparables. While Ind. Code § 6-1.1-15-18(c) provides authority for the admissibility of comparable assessments, the point does not establish that $22.00 per square foot corresponds to the land's actual market value-in-use. *See O'Donnell*, 854 N.E.2d at 94-95; *Eckerling v. Wayne Twp. Assessor,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

k. Furthermore, the Petitioner's claim does not indicate his dispute is limited to the assessed value of the land. Although the Respondent's case focused entirely on the land and the improvement assessed value was rather small, in order to make a prima facie case the Respondent had the burden to prove the assessment is correct—including the value of the improvements. The subject property and the assessment comparables are parking lots. But the improvement assessed value for the subject property was $15,600 and the improvements assessed value for each of the comparables was only $3,000. The Respondent entirely ignored this difference and offered no probative evidence that the subject property's improvements assessed value is correct.

l. There is no substantial, probative evidence that the assessed value of the improvements is correct. Therefore, the Respondent failed to make a prima facie case.

17. The Respondent's failure to make a prima face case means that the Petitioner's responsibility to offer probative evidence in support of its claim was not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs,* 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (holding that when a taxpayer fails to provide probative evidence supporting the position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered).

Conclusion

18. Because the Respondent failed to prove the current assessed value is correct, the Petitioner's claim prevails. In other cases where the Respondent had the burden to prove the assessment is correct and the Respondent failed to carry that burden the Board has ordered that the assessment be returned to the assessed value of the year before.

Final Determination

19. In accordance with the above findings and conclusions, the 2006 assessments will be changed back to what they were in 2005. That means the assessment for parcel number 07-07-19-100-330.000-005 will be changed to a total of $178,600 and the assessment for parcel number 07-07-19-100-329.000-005 will be changed to a total of $161,800.

ISSUED: January 18, 2013

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html